

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 167 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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BHANVARSINH UDESINH RANAVAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 167 of 2001
MR VK JOSHI for Petitioner
MR HL JANI, Learned APP for Respondents
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. Heard Mr.V.K.Joshi, learned advocate for the petitioner and Mr.H.L.Jani, learned APP for the respondents.

2. In this present petition, the petitioner has

challenged the externment order dated 9/8/2000 passed in Externment Case No.176 of 2000 by the Deputy Commissioner of Police, Zone-4, Ahmedabad City and the order dated 28/10/2000 passed by the Appellate Authority. No reply has been filed by the respondents.

3. Mr.V.K.Joshi, learned advocate appearing on behalf of the petitioner has submitted that various contentions have been raised in the present petition challenging the externment order as well as the order of the Appellate Authority. According to him, one contention is enough to vitiate the order of externment. Mr.Joshi has also submitted that in ground - (E) raised in the petition, it is stated that the order of externment, which has been passed by the concerned Authority, is also not a speaking order. Mr.Joshi has also submitted that the concerned Authority is quasi-judicial authority, he should have to give the reasons in support of his conclusion and also he should have to give reason not to believe the defence of the petitioner. Mr.Joshi has also submitted that in response to the show cause notice, which was received from the concerned authority by the petitioner, the petitioner has also submitted the reply, which was not taken into account by the concerned Authority. The learned advocate for the petitioner has also submitted that looking to the order of externment itself it is clear that no reason has been given by the concerned Authority. Not only that no reference has been made in the externment order, whether the reply submitted by the petitioner has been taken into account by the concerned authority or not. Mr.Joshi has also submitted that the details about the statements of the secret witnesses are also not disclosed in the show cause notice. Though the statements of the secret witnesses were recorded prior to the show cause notice to the petitioner and the statements of the secret witnesses have been taken into account by the concerned Authority, while passing the externment order, the Appellate Authority has also considered the same material against the petitioner, while rejecting the appeal. Mr.Joshi has relied upon two decisions of this Court in the case of (Shri) Hussainmiya @ Jago Razakmiya Qadri v/s. State of Gujarat & Ors., reported in 1999 (2) G.L.H. 786 and in the case of Balvantsingh @ Nanio Kalyansingh Rajput v/s. Deputy Commissioner of Police, Vadodara and Another, reported in 1999 (1) G.L.H. 207

4. Mr.H.L.Jani, learned APP appearing on behalf of the respondents has submitted that looking to the offences registered against the present petitioner and the activities which have been carried out by the

petitioner in the society, there were compelling circumstances with the respondent - Authority to pass an externment order. Otherwise, in society, the atmosphere of dangerous situation will be raised. Therefore, Mr. Jani has also submitted that while passing the externment order, the concerned Authority has taken into account all the materials including the statements of secret witnesses and, therefore, the order of exetrnment is legal and valid and the Appellate Authority has also applied his mind and after considering the materials, the appeal was rejected. Therefore, no interference is required by this Court.

5. I have considered the submission of both the learned advocates. According to my opinion, bare perusal of exetrnment order which is one page order dated 9/8/2000, will make it clear that no reference has been made by the authority about the reply submitted by the petitioner. Not only that but the respondent - Authority has not discussed the evidence which was laid in the inquiry. Not only that the respondent - Authority has not discussed the favourable evidence and also contrary evidence against the present petitioner in the order of externment. No discussion about the statements of the secret witnesses that what evidence has been given by them against the present petitioner. Therefore, looking to the order itself the same is unreasonable and non-speaking order. The respondent authority who is a quasi-judicial authority has to act in a quasi judicial manner and while passing any adverse order against the petitioner, it is a duty of the concerned authority to give reason in support of his conclusion. It is also necessary to note that Section 59 requires the notice and explanation from the petitioner has been called for by the concerned authority. After having received the reply from the petitioner, the inquiry is required to be held against him. In the said inquiry, the witnesses from the prosecution as well as defence witnesses are required to be examined and the opportunity of the cross-examination is also necessary to be given to the petitioner. Thereafter, the conclusion is required to be drawn by the concerned authority. There is a detailed procedure prescribed in the statue with an intention to give effective and reasonable opportunity to the petitioner. In such circumstances, it is a duty of the concerned respondent Authority to act in quasi-judicial manner and to discuss the evidence against and in favour of the petitioner and, thereafter, to give the reason to believe such evidence and, thereafter, he has to come to the conclusion which must be based upon the evidence. In light of the above proposition and considering the order

in question, according to my opinion the concerned authority has not discussed any evidence. Not only that the concerned authority has not discussed any evidence and whatever evidence has been considered by the concerned authority, was considered without discussing the statements of the secret witnesses, the same has been believed and, therefore, according to my opinion, the view taken by this Court in the case of Balvantsingh @ Nanio Kalyansingh Rajput v. Deputy Commissioner of Police, Vadodara & Anr., reported in 1999 (1) G.L.H. 207 is applicable to the facts of the case. The relevant para-(6) of the aforesaid judgment, is quoted as under :-

"6. The order is also not a speaking order.

An order cannot be said to be speaking order simply because it runs in six pages. The conclusion of the Externment Authority is to the following effect :

"Heard the submissions made by you and your Advocate. After carefully examining evidences produced for prosecution and defence at the end of discussion I am satisfied that there are sufficient evidences to believe that if your externment will not be made then you will continue your criminal anti-social activities. Therefore, there are sufficient and reasonable grounds for your externment".

From this it is clear that only subjective satisfaction was arrived at by the Externment Authority and not that there was slight discussion of evidence adduced by the petitioner and no ground for its rejection was given by the Externment Authority. The Appellate authority simply observed that it seems that due to good relation with appellant they (which means witnesses) came to give evidence and it seems that they are suppressing material facts. This is also nothing but subjective satisfaction of the Appellate Authority. No reason has been given why uncross examined statements could not be believe by the Appellate Authority and on what material quasi-judicial authority made observation that the witnesses of the petitioner were suppressing material facts. In Jorubhai Aapabhai Kathi Darbar v. Sub-Divisional Magistrate, reported in 1996 (1) G.L.H. 53 this Court found that where the Externment Authority did not set out explanation given by the Externee the order of externment becomes totally

non-speaking order as it does not disclose any reason or justification. Thus, for this reason also the impugned orders are rendered illegal."

6. In view of the aforesaid observation and looking to the facts and circumstances of the case, the order of externment itself is unreasonable and non-speaking and, therefore, the order of externment as well as the order of the Appellate Authority are required to be quashed and set aside.

7. In the result, the present petition is allowed. The order of the externment dated 9/8/2000 passed in Externment Case No.176 of 2000 by the Deputy Commissioner of Police, Zone-4, Ahmedabad and the order dated 28/10/2000 passed by the Appellate Authority are hereby quashed and set aside. Rule is made absolute.

(H.K.Rathod, J.)

(vrpanchal)**